

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 22ND DAY OF SEPTEMBER 2022/31ST BHADRA, 1944

SSCR NO. 12 OF 2022

PETITIONER/S:

SUO MOTU

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT
SECRETARIATE, THIRUVANATHAPURAM - 695001.
- 2 THE TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, NANTHANCODE,
KAWDIAR POST, THIRUVANANTHAPURAM - 695003.
- 3 DEVASWOM COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, NANTHANCODE,
KAWDIAR POST, THIRUVANANTHAPURAM - 695003.

OTHER PRESENT:

SRI S.RAJMOHAN- SR GOVERNMENT PLEADER ;

SRI G.BIJU - STANDING COUNSEL -TRAVANCORE
DEVASWOM BOARD ;

SRI N.RAGHURAJ -AMICUS CURIAE (SABARIMALA
SPECIAL COMMISSIONER)

THIS SABARIMALA SPECIAL COMMISSIONER REPORT HAVING
COME UP FOR ADMISSION ON 22.09.2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

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ORDER

The Special Commissioner, Sabarimala, has filed this report regarding the steps to be taken to ensure fairness, transparency and also adherence to the prescribed guidelines for the interview of candidates to be shortlisted for selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1198 ME (2022-23).

2. Sabarimala Sree Dharma Sastha Temple, which is situated inside Periyar Tiger Reserve, is a prominent pilgrim centre in Kerala, where lacks of devotees trek the rugged terrains of Western Ghats to have darsan of Lord Ayyappa. Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple come under the Travancore Devaswom Board. By reason of the custom and tradition, Melsanthies of the Temples are selected every year. The tenure of the Melsanthies is for one year from the first of Vrischikam to the 31st of Thulam next year.

3. In **Mohandas Embranthiri v. Travancore Devaswom Board [2001 (1) KLT 203]**, in the context of selection of Melsanthi of Sabarimala Sree Dharma Sastha Temple, a Division Bench of this Court held that the Travancore Devaswom Board, being a State under Article 12 of the Constitution of India, cannot choose any person as Melsanthi

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without any guidelines. For every year, the choosing of Melsanthi has to be done only after proper selection. The Division Bench noticed that the notification issued by the Travancore Devaswom Board inviting applications for the selection of Melsanthi of Sabarimala Sree Dharma Sastha Temple, for one year starting from 31st Thulam, 1176, mentions the basic qualifications necessary for being selected and that, those who have got basic qualifications will be interviewed by the Committee, which will include the Thanthri. On the basis of the interview, a short list will be prepared. The selection will be made from the candidates included in the short list on the basis of lot in front of the sanctum *sanctorum*. The Interview Board should consist of persons, who have knowledge of the subject on which questions are put. The Division Bench noticed that the purpose of the interview is to get best persons for appointment of Melsanthi at Sabarimala Temple. The knowledge of the candidates in the three topics should be assessed, which can be done with the experts in the field.

4. The issue relating to the procedure for selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple went up to the Apex Court. When a challenge was carried against earlier orders issued by this Court,

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the Apex Court by the order dated 15.11.2010 in Civil Appeal No.2570-71 of 2003 referred the matter for mediation. The 'Terms of Settlement' arrived at between the parties were placed on record along with the report of the Mediator. The said 'Terms of Settlement' fundamentally related to composition of selection committee for interviewing and awarding marks for selecting Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple. By the order dated 06.09.2011, the Apex Court disposed of Civil Appeal No.2570-71 of 2003 in terms of the 'Terms of Settlement' arrived at between the parties. The said 'Terms of Settlement' read thus;

"Terms of Settlement:-

1) The composition of the Selection Committee (for interviewing and awarding marks for selecting "Melsanthi" for both Sabarimala and Malikappuram temples) was one of the seriously contested issues. All parties, after detailed discussions, agreed to have the Selection Committee to consist of the following persons:

A. i) President of TDB.

ii) The Member of TDB.

iii) The remaining Member of TDB.

iv) The Commissioner of TDB.

B. i) The Senior Thanthri of "Thazhamon Illam/Madom"

ii) The Junior Thanthri of "Thazhamon Illam / Madom"

C. The "Outside Thanthri" selected in the process indicated in Clause (a) of Para.2 below:

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2) The following modalities have been agreed upon by all as to the formation of the Selection Committee:

- a. The Thazhamon Illam (hereinafter referred to as "the Illam" for short) will send up names of three persons whom they consider eminent Thanthries to TDB. Keeping those names in serious consideration, TDB will draw up a list of ten persons who are eminent Thanthries. That list will be forwarded to the Senior Raja of Pandalam Royal family (hereinafter referred to as "Senior Raja"). The latter will choose five names from the said list and forward such names to the Illam. The Senior Thanthri of the Illam will choose one of them and communicate the same to TDB. Thereupon, proceedings will be drawn up by TDB appointing the chosen person as the "Outside Thanthri" to be on the selection panel. TDB will notify the same. This panel will be valid for one year. But the same procedure will be adopted for composition of the Selection Committee thereafter also year after year, unless there is statutory intervention.
- b. It is made clear that if Illam is not sending up the names to TDB within one week of receipt of a requisition for that purpose made by TDB, it is open to TDB to prepare the panel of names and send it to the Senior Raja. Similarly, if Senior Raja is not sending the names chosen by him to the Illam, within one week of receipt of the panel from TDB, it is open to TDB to request Thazhamon Illam to choose one name from the original panel prepared by TDB.
- c. If the Illam is not selecting one person from the panel sent by the Senior Raja (or by TDB as the case may be) within a reasonable period, it is open to TDB to choose

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one from the panel already formulated by them and notify him as the "Outside Thanthri" to be on the Selection Committee.

The above is only for composition of the Selection Committee. The next task is to select the "Melsanthies".

- d. TDB will make the names of all the applicants available on their web site, so that it is open to the Senior Raja to find out whether there is any blemish for any of the applicants and communicate that fact to TDB and or to the Senior Thanthri, well ahead of commencement of the selection process.
- e. Next is the preparation of a list of selected candidates after holding the interview of the applicants by the members of the Selection Committee.

While interviewing candidates for "Melsanthies" the members of the Selection Committee can award a total of 90 marks. Out of the 90 marks, 30 marks are set apart for the President, Members and Commissioner of TDB for putting such questions as are deemed necessary for eliciting general knowledge of each candidate and to test his personality. The remaining 60 marks are set apart for putting questions to elicit candidates' knowledge in Sanskrit, poojas, rites, Tanthric Rituals and other religious matters. Questions in this regard shall be put by the remaining Members of the Selecting Committee formulated above. Out of the 60 marks thus set apart for eliciting the candidates' knowledge in Sanskrit, poojas, etc. the Unit comprising of the Senior Thanthri and Junior Thanthri of Thazhamon Illam/ Madom together can award marks up to 30. The other Unit (the "Outside Thanthri") can award marks up to 30.

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f. After the Selection Committee finalises the list of selected candidates for both Sabarimala and Malikappuram the final choice will be made by draw of lot. The Senior Raja agreed to depute a male child (not above the age of ten) for Sabarimala and a female child (not above the age of ten) for Malikappuram for the purpose of drawing the lot. If male/female child for the above purpose is not deputed by the Senior Raja within a reasonable period, it is open to TDB to arrange for draw of lot in such manner as they deem fit.

3) All parties agreed that the appeals can be disposed of in terms of the above settlement."

5. In **Krishnan Namboothiri S. v. Travancore Devaswom Board and others [2015 (5) KHC 829]**, in the context of selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, another Division Bench of this Court held that, selection to the post of Melsanthi cannot be treated as a selection merely for public employment and the canvas in which grounds relating to Articles 14, 16, etc., of the Constitution of India would be etched, will not necessarily be carried, as a whole, into such matters. The scheme of the settlement and purpose of the selection to provide Melsanthies of Sabarimala Sannidhanam and Malikappuram temples have to be borne in mind and cohesively treated while assimilating and applying the terms of the settlement. The Division Bench, though

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declined interference with the selection process, indicated before parting with the case that once the terms of mediation settlement came to be in operation, the guarantee to the pilgrims, believers, worshippers and the faithful followers is that the selection process once carried through the system of the terms of that settlement will give them two persons who will occupy the adorable status of being the Melsanthis of Sabarimala Sannidhanam and Malikappuram temples. When such seeds of faith are intricately connected with religion, judicial review is impermissible to embark upon and consider any rival claims in the manner as is sought to be raised in the writ petitions. This is all the more so when no breach of the Constitution of India is demonstrated.

6. In **Rajesh J. Potty v. Travancore Devaswom Board [2018 (5) KHC 220]** a Division Bench of this Court was dealing with a case which was filed by an applicant who applied to take part in the selection process leading to the appointment of Melsanthi at Sabarimala Temple. In the writ petition, it was alleged that, the petitioner is incapacitated from taking part in the process because, as per Ext.P1 notification issued by the Travancore Devaswom Board, only a Santhi (Priest) who has had 12 years experience, out of which, 10 years being spent

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continuously serving as a Melsanthi (Head Priest) of a temple would alone obtain eligibility for being selected as the Melsanthi of Sabarimala Temple. In the writ petition it was contended that the above stipulation mandating continuous 10 years service as Melsanthi amounts to an illegal classification among the Santhies, since it has no rationale nexus to the objective sought to be achieved by such classification. The petitioner pointed out that till 2016, there was no such stipulation in the notifications, as evidenced by Ext.P9 notification for the year 2013 and Ext.P10 notification for the year.

7. In **Rajesh J. Potty [2018 (5) KHC 220]** the Division Bench noticed that Ext.P1 notification does not provide that every Santhi who has put in 12 years service is automatically eligible; but it additionally prescribes a condition that such Santhis should also have served as a Melsanthi in a temple for a continuous period of 10 years out of this, for being rendered eligible to be appointed as the Melsanthi of Sabarimala Temple. Such prescriptive conditions to determine eligibility of a person can, by no stretch of imagination, be seen as a sub- classification; but the 12 years continuous service as a Melsanthi in any other temple is only a qualificational condition precedent and the fixing of such a period is intended to narrow the field of choice to the

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most experienced in terms of years. This becomes all the more relevant because, going by the notification, a person who becomes the Melsanthi in Sabarimala can apply again only after a period of 10 years. These are the prescriptions stipulated in the notification, not to discriminate among persons; but solely to ensure that only a person with the stature and experience behooving the sanctity and divinity of Sabarimala, which is one of the most or perhaps the most prominent temples in the country, is identified and appointed. Before the Division Bench, it was argued by the learned counsel for the petitioner that Chapter 5 of the Travancore Devaswom Manual published by the Board in the year 2011 treats 'Santhikkars' as a single class and that the provisions of a Melsanthi therein are only with respect to the volume and nature of work in a particular temple. Manual does not speak specifically about the difference between Melsanthis and other Santhis, but only that Melsanthis and Keezhsanthis are appointed in temples where there is a requirement of more than one Santhi. Before the Division Bench, it was argued by the learned Standing Counsel for Travancore Devaswom Board that the prescription in Ext.P1 notification is in the nature of specified qualifications for the Sabarimala Temple alone and that these prescriptions are at variance with those for other temples, since

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Sabarimala is not an ordinary temple, which has its own singular characteristics, which would require the best and the most experienced Santhi to be appointed as the Melsanthe. The Board, therefore, in the year 2016, thought it fit to enumerate certain adscititious conditions to identify the best candidate, by stipulating that only a person, who has 12 years experience as a Santhi, out of which 10 years being continuously served as a Melsanthe of another temple, would obtain eligibility for being included in the field of choice for appointment as the Melsanthe of Sabarimala. Even when all these stipulations regarding qualification are obtained to a person, he only comes within the field of choice and he does not get any vested right to be appointed, since such appointment is based on a further selection in the manner as has been postulated by the Apex Court in its judgment in Civil Appeal Nos.2570-71 of 2003.

8. In **Rajesh J. Potty [2018 (5) KHC 220]**, on consideration of the aforesaid contentions on the prescription of the qualifications mentioned in Ext.P1 notification, the Division Bench found that the attempt of the Travancore Devaswom Board should always be to find the best among the Santhis, so that he will be able to perform as a Purappedasanthi of Sabarimala Temple for a continuous period of one year. His devotion, his

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competence, his experience and his devoutness are all imperatively relevant criteria, which will require to be specifically and pointedly examined and assessed by the competent authorities; and in order to find the person most suitable for the post, the prescription that he should have served as a Melsanthi for a continuous period of 10 years in the 12 year period of experience as a Santhi cannot be found to be perverse in any manner.

9. The captioned report filed by the Special Commissioner, Sabarimala, pertains to the selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1198 ME (2022-23), regarding the steps to be taken to ensure fairness, transparency and also adherence to the prescribed guidelines for the interview of candidates to be shortlisted for the selection. In the captioned report the Special Commissioner has pointed out the order of the Apex Court dated 06.09.2011 in Civil Appeal No.2570-71 of 2003, the report of the Mediator and the 'Terms of Settlement' arrived at between the parties; the orders of this Court dated 10.10.2018 and 29.10.2018 in SSCR No.17 of 2018; the order dated 26.07.2019 in SSCR No.11 of 2019 and DBA No.7 of 2019; the order dated 25.09.2020 in SSCR No.10 of 2020 and DBA

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No.10 of 2020; and the order dated 28.09.2021 in SSCR.No.5 of 2021.

10. For selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1198 ME (2022-23), applications have been called for. After Vigilance enquiry 58 applicants, i.e., 35 applicants for Sabarimala Sree Dharma Sastha Temple and 23 applicants for Malikappuram Temple are recommended for interview, which is scheduled to be held on 26.09.2022 and 27.09.2022, at the Travancore Devaswom Board Head Office, Thiruvananthapuram. From among the successful candidates, shortlist will be prepared and Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple will be selected by draw of lots.

11. After considering the averments in the captioned report of the Special Commissioner, Sabarimala and also the submissions made by the learned Standing Counsel for the Travancore Devaswom Board and also the learned Senior Government Pleader, we are of the view that, in the matter of selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1198 ME (2022-23), conducted in terms of the order of the Apex Court dated 06.09.2011 in Civil Appeal No.2570-71 of 2003, the guidelines/

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directions issued in the orders of this Court dated 10.10.2018 and 29.10.2018 in SSCR No.17 of 2018; the order dated 26.07.2019 in SSCR No.11 of 2019 and DBA No.7 of 2019; the order dated 25.09.2020 in SSCR No.10 of 2020 and DBA No.10 of 2020; and the orders dated 28.09.2021 and 13.10.2021 in SSCR.No.5 of 2021 are to be strictly followed by the Selection Committee. It is ordered accordingly.

12. Taking into account the situation prevailing in the State due to Covid-19 pandemic, Covid protocol restrictions and the consequential difficulty in bringing children below the age of 10 years to draw the lots for selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1198 ME (2022-23), the Senior Raja of Pandalam Royal Family was permitted to depute two male children above the age of 10 years to draw the lots for selection of Melsanthies to Sabarimala and Malikappuram Devaswoms, in the order dated 25.09.2020 in SSCR No.10 of 2020 and DBA No.10 of 2020 and the order dated 28.09.2021 in SSCR.No.5 of 2021. Since the restrictions in connection with Covid-19 pandemic have already been lifted to a larger extent, the Senior Raja of Pandalam Royal Family is directed to depute a male child (not above the age of 10 years) for Sabarimala and a female

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child (not above the age of 10 years) for Malikappuram for the purpose of drawing the lot, as per clause 2(f) of the settlement, for selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1198 ME (2022-23).

13. For the year 1198 ME (2022-23), for selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, interview is scheduled to be held on 26.09.2022 and 27.09.2022, at the Travancore Devaswom Board Head Office, Thiruvananthapuram. From among the successful candidates, shortlists will have to be prepared and Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple will have to be selected by draw of lots. The constitution of the Selection Committee, award of marks, etc., are settled as per the order of the Apex Court dated 06.09.2011 in Civil Appeal No.2570-71 of 2003 and also the guidelines/directions issued in the orders of this Court in SSCR No.17 of 2018; SSCR No.11 of 2019 and DBA No.7 of 2019; SSCR No.10 of 2020 and DBA No.10 of 2020; and SSCR.No.5 of 2021.

14. Having perused the report of the Special Commissioner, Sabarimala, we appoint Hon'ble Mr. Justice R.Bhaskaran, a former Judge of this Court, as the 'Observer' and

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request him to oversee the proceedings for selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1198 ME (2022-23) at the Travancore Devaswom Board Head Office, Thiruvananthapuram. We also request him to be there in Sabarimala at the time of draw of lots. Taking into account the situation prevailing in the State due to COVID-19 pandemic, we direct the Travancore Devaswom Board to arrange necessary conveyance and accommodation to the Observer.

15. The Observer appointed by this Court for the year 1195 ME (2019-20) reported wide difference in the marks awarded by the three Thanthries at the time of interview. Therefore, it was observed in the said report that, it would be better if the Observer is directed to file a report before the lots are taken, so that the mark list can be verified by this Court, in order to ensure that the interview was conducted in a fair manner. That suggestion is made with a bonafide intention to ensure that an upper hand is not actually given to any particular candidate by anyone by granting excessive marks.

16. Therefore, the Observer is requested to file a report before this Court after the culmination of the interview for selection of Melsanthies of Sabarimala Sree Dharma Sastha

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Temple and Malikappuram Temple, for the year 1198 ME (2022-23).

17. The learned Standing Counsel for the Travancore Devaswom Board would submit that the interview is scheduled to be held on 26.09.2022 and 27.09.2022 from 09:00 a.m. onwards. It is made clear that all members of the Selection Committee shall be present in the Head Office of the Travancore Devaswom Board, well in advance, in order to ensure that the interview commences at 09:00 a.m., with all the members of the Selection Committee.

18. The entries in the mark sheet shall be made only by using 'ballpoint pen'. The mark sheets shall be counter signed by the Observer and shall be kept in safe custody of the Commissioner of the Travancore Devaswom Board. The entire proceedings scheduled to be held on 26.09.2022 and 27.09.2022, at the Travancore Devaswom Board Head Office, Thiruvananthapuram, shall be video-graphed. After the interview, the Special Commissioner, Sabarimala, shall file a report before this Court, which shall be listed before the Bench on the very next working day. The Commissioner of the Travancore Devaswom Board shall produce the CD of the selection proceedings, mark lists and also the short list before this Court,

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in a sealed cover, through the learned Standing Counsel for the Travancore Devaswom Board, immediately, at any rate, on or before **07.10.2022**. After the production of the mark lists, shortlist and the CD of the selection proceedings, Travancore Devaswom Board may proceed with the draw of lots, subject to orders to be passed by this Court on perusal of the report of the Observer, the short list and the CD of the selection proceedings.

19. Registry shall ensure that copy of this order and also copy of the orders of this Court dated 10.10.2018 and 29.10.2018 in SSCR No.17 of 2018; the order dated 26.07.2019 in SSCR No.11 of 2019 and DBA No.7 of 2019; the order dated 25.09.2020 in SSCR No.10 of 2020 and DBA No.10 of 2020; and the orders dated 28.09.2021 and 13.10.2021 in SSCR.No.5 of 2021 are furnished to Hon'ble Mr.Justice R. Bhaskaran, the Observer.

With the above observation, this SSCR is disposed of.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

bkn/-